In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-776

CITY WELDING & MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. In an unfair labor practice proceeding, the National Labor Relations Board found that petitioner ("the Company") had violated Section 8(a) (1), (2) and (3) of the National Labor Relations Act, 29 U.S.C. 158(a) (1), (2) and (3), by interfering with the rights of its employees to engage in union activities; dominating and interfering with the formation and administration of an employees grievance committee; and discharging ten employees because of their union activities (Pet. App. 43–44, 47, 51, 57, 59, 62–63). The Board further found that the Union[1] had obtained

[1] International Association of Machinists and Aerospace Workers District No. 106, AFL–CIO.

492-907—73

valid authorization cards from a majority of the employees in an appropriate unit (Pet. App. 84), and that, in view of the extensive unfair labor practices, the Company violated Section 8(a) (5) and (1) of the Act by refusing to bargain with the Union (Pet. App. 85, 88). The Board ordered the Company to cease and desist from the unfair labor practices found; to reinstate with backpay the ten discharged employees; to dissolve the company dominated employees grievance committee; and to bargain with the Union upon request (Pet. App. 88–89). On the Board's petition the court of appeals enforced the Board's order in full (Pet. App. 103–104).

2. Petitioner does not challenge the Board's findings that it violated Section 8(a) (1), (2), and (3) of the Act, and that it refused to bargain with the Union. Instead, it contends that the Board's bargaining order was improper under this Court's decision in *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575. In our view, this contention is insubstantial and further review of the Board's order is unwarranted.

a. Petitioner contends (Pet. 8–11) that the authorization cards did not clearly authorize the Union to represent the employees for collective bargaining, but were instead "dual-purpose" cards which led the employees to believe that they would have a representation election. However, although this Court in *Gissel* made "no decision as to the conflicting approaches used with regard to dual-purpose cards" (395 U.S. at 606), it stated that "employees should be

bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to divert the signer to disregard and forget the language above his signature" (*ibid.*).[2] In the instant case, the cards in question were labeled "YES, I WANT THE IAM," and stated clearly that the Union was authorized to act as the signers' collective bargaining agent. Although the cards also stated that they might be used to compel a representation election, they made clear that the choice whether to seek an election or to seek outright recognition on the basis of the cards was "at the discretion of the union" (Pet. App. 65). Under these circumstances, the court below correctly concluded that the cards were not ambiguous (Pet. App. 104).[3]

b. Petitioner also contends (Pet. 14–17) that the Board based its bargaining order solely on the Com-

---

[2] The Court also pointed out that "[t]here is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election," since elections are held in a vast majority of cases, and the union can obtain an election with cards from 30 percent of the employees if the employer refuses the bargaining demand. 395 U.S. at 606–607.

[3] Similarly, the Company's further contention (Pet. 11) that the Union, in soliciting employee signatures, misrepresented the purpose of the authorization cards is not supported by the record. The Trial Examiner, whose findings were accepted by the Board and the court below, discredited assertions that the Union representative either threatened employees, or informed them that their cards would be used only to obtain an election (Pet. App. 68–84).

pany's refusal to bargain, and failed to determine whether such an order was necessary to remedy the Company's other unfair labor practices, as required by *Gissel, supra.* The Trial Examiner, however, whose decision the Board adopted, specifically found that a bargaining order was necessary not only to remedy the Company's refusal to bargain, but also because the violations of Section 8(a) (1), (2) and (3) of the Act were "so flagrant and coercive in nature as to require, even in the absence of an 8(a)(5) violation, a bargaining order to repair their effect" (Pet. App. 85, 87).[4] Accordingly, the bargaining order was warranted under the *Gissel* standards. 395 U.S. at 613–616.[5]

It is therefore respectively submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

JANUARY 1973.

---

[4] The Examiner further found (Pet. App. 87) that: "'Respondent's unfair labor practices were of such a pervasive character as to make it unlikely that their coercive effects would be neutralized by conventional remedies so as to provide a fair election'" (quoting from *Medley Distilling Co.*, 187 NLRB No. 12).

[5] The Company's contention (Pet. 11–14) that different standards have been applied by the courts of appeals in approving Board bargaining orders is without merit, since the cases cited involved distinguishable factual circumstances from those present here.

U.S. GOVERNMENT PRINTING OFFICE: 1973